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February 16, 2008

**BY CERTIFIED MAIL**

Carlos M. Gutierrez  
Secretary  
United States Department of Commerce  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

Dirk Kempthorne  
Secretary  
United States Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Re: Violation Of The Endangered Species Act With Respect  
To Atlantic Salmon Of The Kennebec River, Maine

Dear Secretaries Gutierrez and Kempthorne:

This letter is written on behalf of Friends of Merrymeeting Bay, the Center for Biological Diversity, and the Maine Toxics Action Coalition (collectively, the "Groups"), and their members.

The Groups intend to sue you and your departments for violating the federal Endangered Species Act ("ESA" or "Act"). The National Oceanic and Atmospheric Administration's National Marine Fisheries Service ("NOAA Fisheries Service") and the United States Fish and Wildlife Service ("USFWS") (collectively, the "Services") have failed to act on a petition to list the Kennebec River population of Atlantic salmon as endangered under the ESA within the time required by the Act.

Once a petition to list a species as endangered is received, the Services have 90 days, to the maximum extent practicable, within which to make an initial determination on the petition (known as a "90-day finding"). 16 U.S.C. § 1533(b)(3)(B). If the initial determination is positive, the Services have 12 months from the date the petition was received to make a final determination on the petition. 16 U.S.C. § 1533(b)(3)(B).

On May 11, 2005, Friends of Merrymeeting Bay, the Maine Toxics Action Coalition and others filed a petition to list the population of Atlantic salmon (*Salmo salar*) in Maine's Kennebec River as endangered under the ESA. In response to the petition, on November 14, 2006 NOAA Fisheries issued a 90-day finding that "the petition presents substantial scientific information indicating that the petitioned action may be warranted." 71 Federal Register 66298, 66330. It has been more than two and a half years since the filing of the petition and more than a year since the 90-day finding, and you and the Services still have not made a final determination on the petition. This delay violates 16 U.S.C. § 1533(b)(3)(B).

Your failure to make a final determination on the petition within 12 months of its submission subjects you to a citizen suit pursuant to 16 U.S.C. § 1540(g)(A) and (C). This letter is sent pursuant to the 60-day notice requirement of the ESA citizen suit provision, 16 U.S.C. § 1540(g)(2).

Making a final determination on listing the Kennebec Atlantic salmon will not require a significant commitment of resources from the Services. A Biological Review Team has already written a Status Review, which supports listing the Kennebec Atlantic salmon. That status review was peer reviewed. The Groups do not believe that further delay in listing the Kennebec Atlantic salmon as endangered is warranted.

It is vitally important that the Services list the Kennebec Atlantic salmon as endangered. According to the Status Review, it is likely the Kennebec had some of the largest historical salmon runs. Now, also according to the Status Review, Atlantic salmon in the Kennebec and throughout the Gulf of Maine face possible extinction.

If you believe any of the above information is in error, if you take steps to correct these violations of the ESA within the next sixty days, if you believe you are currently in compliance with the ESA, or if you have any questions concerning this letter, or the described violation, please contact me immediately.

Friends of Merrymeeting Bay is a non-profit organization dedicated to preserving the ecological, aesthetic, historical, recreational and commercial values of Maine's Merrymeeting Bay and its watershed, which includes the Kennebec River. The Center for Biological Diversity is a national non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center and its members are concerned with the conservation of endangered species, including the Atlantic salmon, and the effective implementation of the Endangered Species Act. The Maine Toxics Action Coalition conducts and distributes research, studies and analysis relating to environmental,

economic and social justice issues. The Coalition develops policy solutions, proposals and educational materials that address air, water, toxics and wildlife issues, among others.

Sincerely,



David A. Nicholas

cc by certified mail:

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